

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CV 9154

Ulysses P Malvan

40 Ann Street

New York NY 10038

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

Community Access

2 Washington Street, 9th Floor

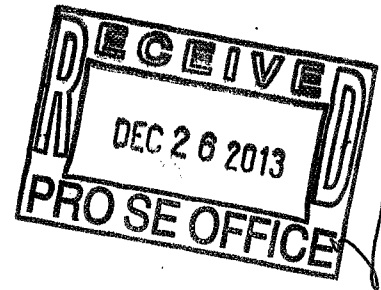
New York, N.Y. 10002

(In the space above enter the full name(s) of the defendant(s).
If you cannot fit the names of all of the defendants in the space
provided, please write "see attached" in the space above and
attach an additional sheet of paper with the full list of names.
Typically, the company or organization named in your charge
to the Equal Employment Opportunity Commission should be
named as a defendant. Addresses should not be included here.)

COMPLAINT
FOR EMPLOYMENT
DISCRIMINATION

Jury Trial: ☐ Yes ☐ No

(check one)



This action is brought for discrimination in employment pursuant to: (check only those that apply)

Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

NOTE: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634.

NOTE: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.

Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117.

NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status).

New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131 (actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status).

I. Parties in this complaint:

- A. List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name Ulysses P Malvan
 Street Address 140 Ann Street
 County, City New York NYC
 State & Zip Code New York 10038
 Telephone Number 347 536 9569

- B. List all defendants' names and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant Name Community Access
 Street Address 2 Washington Street 9th Floor
 County, City New York, N.Y. 10002
 State & Zip Code NY 10002
 Telephone Number 212

- C. The address at which I sought employment or was employed by the defendant(s) is:

Employer Community Access
 Street Address 2 Washington Street
 County, City New York NYC
 State & Zip Code N.Y. 10002
 Telephone Number _____

II. Statement of Claim:

State as briefly as possible the facts of your case, including relevant dates and events. Describe how you were discriminated against. If you are pursuing claims under other federal or state statutes, you should include facts to support those claims. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. The discriminatory conduct of which I complain in this action includes: *(check only those that apply)*

_____ Failure to hire me.
 _____ Termination of my employment.
 _____ Failure to promote me.
 _____ Failure to accommodate my disability.
 _____ Unequal terms and conditions of my employment.

Retaliation.

Other acts (*specify*):

Sexual Harassment

Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.

B. It is my best recollection that the alleged discriminatory acts occurred on: 11/12/2011 - 3/2014
Date(s)

C. I believe that defendant(s) (check one):

is still committing these acts against me.

is not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (check only those that apply and explain):

☐ race _____ ☐ color _____

☐ gender/sex ☐ religion

☐ national origin _____

☒ age. My date of birth is 06/30/1958 (Give your date of birth only if you are asserting a claim of age discrimination.)

☒ disability or perceived disability, PTSD (specify)

E. The facts of my case are as follow (*attach additional sheets as necessary*):

Supervisor of East Broadway House 255E Broadway sexually harassed me from 11/2010 to 6/2011 including having me sent to his office for over an hour massaging my shoulders and demanding that I accompany him to a restaurant during work hours on penalty of not being able to work and fondled grabbing me in my crotch area. I was also used as maintenance without training or equipment leading to getting lesions on feet. The company misreported income to NYS WCB. The assistant director of housing demanded I do some maintenance that led to injuries in 3/2012 after I reported sexual harassment.

Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, the New York State

Division of Human Rights or the New York City Commission on Human Rights.
Flores's supervisor began to threaten violence and threatened to
cease any employment if I took issue.

III. Exhaustion of Federal Administrative Remedies:

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding defendant's alleged discriminatory conduct on: 1/4/2013, 6/18/2013, 7/02/2013 (Date).

B. The Equal Employment Opportunity Commission (check one):

☒

has not issued a Notice of Right to Sue letter.

☐ issued a Notice of Right to Sue letter, which I received on 10/3/2013 (Date).

Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.

C. Only litigants alleging age discrimination must answer this Question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one):

☒

60 days or more have elapsed.

☐

less than 60 days have elapsed.

IV. Relief:

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs, as follows: court costs, medical costs, housing costs

Representative costs Damages of \$20 Million Dollars for pain suffering
 (Describe relief sought, including amount of damages, if any, and the basis for such relief.)
loss of income, disability, cost of rehousing process, incurred
by NYC HHS and US HUD and Goddard Riverside, Ground, Project Renewal
Foot Centers of NY, Metropolitan Hospital, Medicus, Bellevue Hospital, HRA + SSA
 I declare under penalty of perjury that the foregoing is true and correct.

Signed this 26 day of December, 2013

Signature of Plaintiff

Ulysses B. Melwar

Address

40 Ann Street
NY NY 10039

Telephone Number

347 536 9569

Fax Number (if you have one)

EEOC Form 161-A (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)To: **Ulysses P. Malvan**
180 West 135th Street, Apt 818
New York, NY 10003From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004*On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))*EEOC Charge No.
520-2012-01789EEOC Representative
John B. Douglass, InvestigatorTelephone No.
(212) 336-3765**TO THE PERSON AGGRIEVED:**

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -*(See the additional information attached to this form.)*

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

**Kevin J. Berry,**
District Director**9-27-2013***(Date Mailed)*

Enclosures(s)

cc: **COMMUNITY ACCESS****Morenike Williams**
Director Human Resources
2 Washington Street, 9th Floor
New York, NY 10002



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
District Office: (212) 336-3620

Ulysses Malvan
180 West 135th Street, 818
New York, NY 10030


EEOC Charge No. 520-2012-01789
Malvan v. Community Access

Dear Mr. Malvan:

The Commission has determined that efforts to conciliate this charge as required by Title VII of the Civil Rights Act of 1964, as amended ("Title VII") have been unsuccessful. No further efforts to conciliate this case will be made.

The Commission has also determined that it will not bring a lawsuit against the above named respondent. The issuance of the enclosed Notice of Right to Sue under Title VII concludes the processing of your charge by the Commission. If you decide to sue, you must file a lawsuit in Federal District Court within 90 days of receipt of this letter and Notice of Right to Sue.

On Behalf of the Commission:



Kevin J. Berry
District Director

9-27-2013
Date

enc.

Enclosure with EEOC
Form 161-A (11/09)

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
TTY: (800)-669-6820
District Office: (212) 336-3620
General FAX: (212) 336-3625

EEOC Charge No. 520-2012-01789

Charging Party

Ulysses Malvan
180 West 135th Street, 818
New York, NY 10030

Respondent

Community Access
2 Washington Street, 9th Floor
New York, NY 10002

DETERMINATION

I issue the following determination on the merits of the subject charge. Respondent Community Access is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). All requirements for coverage have been met.

Charging Party alleges being discriminated against on the basis of his sex (male) when he was subjected inappropriate sexual contact by his supervisor. Charging Party alleges that he filed an internal complaint regarding the incident, and was subjected to retaliation when his income was "misreported" by the Respondent, and also when he was assigned to duties outside of his position.

Charging Party has established a prima facie case of employment discrimination under Title VII.

Once a prima facie case has been established by the Charging Party in a complaint of employment discrimination, the burden of proof shifts to the Respondent to provide a legitimate, nondiscriminatory reason for its conduct.

Respondent failed to provide a response to the Charge after written requests were sent on January 11, 2013 and June 18, 2013. Respondent was specifically informed on June 18, 2013 that it risked an adverse determination if it did not respond on or before July 2, 2013. To date no response has been received.

Because the Respondent has been afforded an opportunity to provide an appropriate response to the charge of discrimination and has failed to do so, the Commission determines that the silence is an admission of the allegations in the charge, and exercises its discretion to draw an adverse inference with respect to the allegations.

The Commission assumes that anything that Respondent could submit would not support its position.

Based on the above, the Commission has determined that there is reasonable cause to believe that Respondent has discriminated against Charging Party on account of his sex.

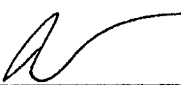
This determination is final. Title VII requires that, if the Commission determines that there is reasonable cause to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that violations have occurred, the Commission now invites Respondent to join with it in an effort toward a just resolution of this matter. Enclosed is a letter outlining the proposed terms of conciliation.

Disclosure of information obtained by the Commission during the conciliation process may only be made in accordance with Title VII and the Commission's Procedural Regulations.

The confidentiality provisions of Sections 706 and 709 of Title VII and Commission Regulations apply to information obtained during conciliation.

If Respondent declines to enter into conciliation discussions, or when the Commission's representative is unable to secure an acceptable conciliation agreement, the Director shall so inform the parties, advising them of the court enforcement alternatives available to aggrieved persons and the Commission.

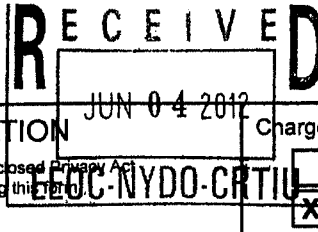
On Behalf of the Commission:



Kevin J. Berry
District Director

9-12-2013
Date

EEOC Form 5 (11/09)



CHARGE OF DISCRIMINATION		Charge Presented To: Agency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
New York State Division Of Human Rights		and EEOC	
State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.)		Home Phone (Incl. Area Code)	Date of Birth
Mr. Ulysses P. Malvan		(347) 536-9569	06-30-1956
Street Address		City, State and ZIP Code	
48 St. Mark's Place Ground Floor		New York, New York 10003	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name		No. Employees, Members	Phone No. (Include Area Code)
Community Access		101 - 200	(212) 780-1400
Street Address		City, State and ZIP Code	
2 Washington Street 9th Floor		New York, New York 10002	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)			DATE(S) DISCRIMINATION TOOK PLACE Earliest _____ Latest 05-10-2010 <input checked="" type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)):			
<p>I am a 53 year old African American male who has been employed as a Housing Counselor by the above-named entity (hereinafter referred to as "respondent") since January 01, 2010.</p> <p>I believe I have been sexually harassed and discriminated against by respondent on the basis of my sex. In addition, I believe I have been discriminated against when respondent failed to properly address my complaints of sexual harassment and denied me benefits and promotional opportunities.</p> <p>Specifically, I have been sexually harassed by the Program's Supervisor of one of my worksites, Nigel Christiani. From 12/2010 through June 2011, Mr. Christiani has displayed inappropriate behavior towards me ranging from touching (grabbing my leg in a restaurant after making my continued ability to work contingent upon accepting the invitation to go to restaurant with him during work hours and rubbing or massaging my shoulders) to restaurant invites during work hours. Additionally, Mr. Christiani has assigned me to duties that are outside of the Housing Counselor position.</p> <p>Upon filing an internal complaint (post injury at site where I was sexually harassed), respondent "misreported" my income which affected my worker's comp. benefits. Since the complaint, respondent has yet to assign me to the site in where Mr. Christiani supervises or allow me to move to any other position in which I am qualified.</p> <p>Based on the above, I believe I was discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended, and other applicable Federal, state, and local anti-discrimination statutes.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) 06/04/2012	
Date <u>06/04/2012</u> Charging Party Signature <u>Ulysses P. Malvan</u>		HENRY SUAREZ Notary Public, State of New York Qualified in Bronx County No. 01SU8255493 My Commission Expires 02-06-2016	